

STATE OF MICHIGAN
COURT OF APPEALS

JANET EMMERT, Personal Representative of the
Estate of RANDAL VAUGHN EMMERT,
Deceased,

UNPUBLISHED
May 25, 2001

Plaintiff-Appellee,

v

No. 219763
Macomb Circuit Court
LC No. 98-001986-NS

DOUGLAS SCHOENHERR,

Defendant-Appellant,

and

WILFRED, INC., d/b/a GAR WOOD'S BAYVIEW
LODGE and METRY'S CREWS INN, INC.,

Defendants.

Before: Talbot, P.J., and Sawyer and F. L. Borchard*, JJ.

PER CURIAM.

Defendant Schoenherr appeals by leave granted from a circuit court order denying his motion for summary disposition pursuant to MCR 2.116(C)(4). We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

We review the trial court's ruling on a motion for summary disposition de novo on appeal. *Gibson v Neelis*, 227 Mich App 187, 189; 575 NW2d 313 (1997). When reviewing a motion brought under MCR 2.116(C)(4), this Court must determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law or whether the affidavits and other documentary evidence show that no genuine issue of fact remained. *Jones v Slick*, 242 Mich App 715, 718; 619 NW2d 733 (2000).

The exclusive remedy provision of the Worker's Disability Compensation Act, MCL 418.131(1); MSA 17.237(131)(1), limits an injured employee's right to recover for injuries

* Circuit judge, sitting on the Court of Appeals by assignment.

negligently inflicted by his employer or a coworker in the course of employment to the benefits payable under the act. *Harris v Vernier*, 242 Mich App 306, 310, 312; 617 NW2d 764 (2000).

As a general rule, the question whether an employee's injury arose out of and in the course of his employment is to be resolved in the first instance by the worker's compensation bureau. *Zarka v Burger King*, 206 Mich App 409, 411; 522 NW2d 650 (1994). "Exclusive jurisdiction lies with the bureau even though plaintiff's complaint does not allege or rely on an employment relationship between the parties." *Johnson v Arby's, Inc*, 116 Mich App 425, 431; 323 NW2d 427 (1982). "The only exception to the bureau's exclusive jurisdiction is where it is obvious that the cause of action is not based on the employer-employee relationship." *Id*. In other words, the "circuit court has jurisdiction to determine rights arising out of an entirely different relationship and in an entirely different type of proceeding in which the employer-employee relationship is only incidentally involved." *Michigan Property & Casualty Guaranty Ass'n v Checker Cab Co*, 138 Mich App 180, 183; 360 NW2d 168 (1984).

Plaintiff's decedent's injuries arose out of an automobile accident arising from defendant's negligence. Defendant and the decedent were together to attend a mandatory national sales meeting. The dinner at Gar Wood's, where defendant was drinking, was on the agenda for the day's activities and was sponsored by the employer. It is unclear from the record whether the dinner was a business function or a social event. Thus it is not obvious that the employment relationship was unrelated to plaintiff's cause of action against the decedent's coworker.

Accordingly, we find that the trial court erred in concluding that it had jurisdiction and reverse. This case is remanded to the trial court. Within thirty days of the release date of this opinion, plaintiff shall file an application with the Worker's Disability Compensation Bureau for a hearing on the question in controversy. If the application is timely filed, the circuit court shall hold the case in abeyance pending the bureau's decision. If the bureau determines that the decedent was acting in the course of his employment when he was injured or if plaintiff fails to file an application with the bureau as directed or to seek review in the Supreme Court in a timely manner, the trial court shall enter an order granting defendant Schoenherr's motion for summary disposition. If the bureau determines that the decedent was not acting in the course of his employment, the case may proceed. *Johnson, supra* at 431-432.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Talbot

/s/ David H. Sawyer

/s/ Fred L. Borchard